

Consumer Finance Monitor (Season 8, Episode 7): Alan Kaplinsky's "Fireside Chat" with Matthew J. Platkin, New Jersey Attorney General

Speakers: Alan Kaplinsky and Matthew J. Platkin

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry. This is a weekly show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm. And I'm your host, Alan Kaplinsky, the Foreign Practice Group leader for 25 years, and now senior counsel of the Consumer Financial Services Group at Ballard Spahr, and I'll be moderating today's program. For those of you who want even more information, don't forget about our blog, ConsumerFinanceMonitor.com. We've hosted our blog since 2011 when the CFPB became operational. So there's a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those in the industry. So to subscribe to our blog or to get on the list for our webinars, please visit us at BallardSpahr.com.

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After our high-level post-election webinar on November 12th, which we repurposed and released as a podcast show on November 27th, our clients expressed great interest in hearing us take a deeper dive into the anticipated changes that will happen at the CFPB and elsewhere once the new acting director or director appointed by President Trump takes over.

To that end, we developed and planned a series of three webinars discussing what will be the large and widespread impact on the CFPB of the election. On December 16th, we presented the first webinar in our series. It focused on CFPB regulations promulgated and other guidance published by the CFPB under the leadership of Director Rohit Chopra, along with outstanding proposed regulations.

Joining us for the first webinar in this series was David Silverman, who held several senior positions at the CFPB for almost 10 years under both Democratic and Republican administrations. David was at the CFPB during the transitions in director from Richard Cordray to acting director Mick Mulvaney, and then director Kathy Kraninger. I had almost a 45-minute fireside chat with David.

He provided an insider's view of what the transitions were like and what we might expect during the next transition from Director Chopra to whoever President Trump appoints as his acting director and then director during the second Trump presidency. On January 2nd, my fireside chat with David was released as our podcast show. On January 9th, we released as our podcast show the second part of that December 16th webinar, which featured several lawyers in our Consumer Financial Services Group who took a deep dive into the area of CFPB regulations and other written guidance.

On January 6th, we presented the second webinar in our series. It focused on CFPB supervision and enforcement under Rohit Chopra and the changes in those areas we expect to see during the term of the next acting or regular director appointed by President Trump. During the first part of that webinar, I did a fireside chat with Kathy Kraninger, who described how she became the director of the CFPB, how she managed the bureau during her tenure, and what steps she expects the new acting director and director appointed by President Trump to take during Trump 2.0.

In the second part of that episode, I was joined by my colleagues John Culhane and Mike Kilgarriff, who took a deep dive into their expectations for CFPB supervision and enforcement during Trump 2.0. Each of those podcast shows were released on January 23rd and 30th respectively. Today and next week, our podcast show will be a repurposing of the third webinar in our series, which was produced on January 17.

Today's show will consist of my fireside chat with Matthew J. Platkin, the New Jersey Attorney General. We will discuss how the New Jersey Attorney General and other attorneys general will react to the rapidly shifting CFPB environment. So it's now my pleasure to introduce Matthew J. Platkin, the New Jersey Attorney General. General Platkin is the 62nd Attorney General of New Jersey.

On February 3rd, 2022, Governor Murphy announced he was appointing Matt Platkin to serve as Acting Attorney General. He assumed office on February 14th, 2022, assuming Andrew Bruck, who was then Acting Attorney General in full on September 29th, 2022, after the confirmation of his appointment by the New Jersey State Senate in May of that year. In that position, he oversees over 40,000 law enforcement officers throughout the state.

General Platkin and his office vigorously enforced the state's consumer protection laws, including the New Jersey Consumer Fraud Act, and they hold businesses accountable when they fail to operate fairly and legally. Prior to his role as attorney general, he served as chief counsel to Governor Murphy. He's a native of New Jersey, holds a BA from Stanford University and his law degree from Stanford as well. So a very warm welcome to you, Matt.

Matthew Platkin:

Thanks for having me, Alan. Sorry about the momentary crisis.

Alan Kaplinsky:

Okay, I think we're beyond that. And I guess we've proven that you also, whoever is in charge of the fire drill, reports to you too. Well, anyway, I think in terms of background, I think I've given the audience a pretty good idea of your background and what you did prior to becoming attorney general.

So let's dig right into a bunch of questions that I have for you where the focus is going to be on in this changing CFPB environment, what are state attorneys general, including General Platkin, going to be doing to fill that void that everybody is anticipating? So while you were chief counsel of the governor, and since you've been attorney general, Matt, can you give us a few examples of consent orders or lawsuits that you have initiated related to consumer financial services?

And were these lawsuits based on alleged violations of the New Jersey Consumer Fraud Act or any of them based on the language in the federal Dodd-Frank Act or the Consumer Financial Protection Act that gives authority to state AGs to enforce the proscription in that federal law against XO practices in addition to unfair and deceptive practices? What's your reaction to that?

Matthew Platkin:

Sure. Well, again, thanks for having me, Alan. And as the chief law enforcement officer of New Jersey, I have a lot of responsibilities, but at the core, my job is to keep the residents of our state safe. And that takes many forms, but it certainly takes the form of keeping the residents of New Jersey safe from fraudulent business practices, particularly when it comes to the financial markets.

We've been very aggressive in using our authority, you mentioned a couple of them, the Consumer Fraud Act and our Division of Consumer Affairs, which is very large, enforces that statute, and we've used it in a variety of contexts. This Consumer Fraud Act has proven to be incredibly adaptive to changing challenges. So it's the statute that we use, for instance, to hold the opioid industry accountable. It's the statute that we use to hold social media companies accountable.

It's the statute that we've used in many instances to hold firearm companies accountable. And with respect to financial, whether it be lenders or other financial actors, we have used that statute in many contexts. So you can

think about Yellowstone Capital where effectively we reached a substantial settlement where effectively the business was luring small businesses into predatory lending arrangements masquerading as cash advances to be secured against future receivables.

Mariner Finance is a good example where we've used the CFPA's provisions. And that's particularly useful in a case like Mariner where it's a multi-state, and I know we're going to talk more about that, where states may not have the same type of robust consumer protection law that New Jersey has. The CFPA is often duplicative of what we have in New Jersey if we were filing our own claim in state court.

But when we're working across state lines on a multi-state basis, which is how these cases often are litigated and increasingly commonly litigated, I should say, the CFPA's provisions can be quite helpful. As was the case in Mariner Finance, which is a large multi-state, survived a motion dismissed, still proceeding, where you have a large lender that's adding a number of hidden fees to customer's loans without their notice. And so we used both our state statutes as well as the federal statutes in cases like that.

Alan Kaplinsky:

I see. So has your office previously collaborated with the CFPB or the FTC investigating certain companies?

Matthew Platkin:

Yeah. We work closely with our federal counterparts, the CFPB, the FTC, Department of Justice. And I will say I've been a strong supporter of the CFPB. We as a state, I was not the attorney general then, though I was in the governor's office, we as a state supported the constitutionality of the CFPB, which obviously was ultimately successful back in 2020. And we worked very closely.

Rohit Chopra happens to be a New Jersey guy, know him well, and we've worked closely over the past four years, past three years for me, on a number of matters, similar with the FTC. And I should say, I know it's not straight consumer fraud protection, but antitrust is an area, especially state antitrust, where there's been increased interest both from Democratic and Republican attorneys general.

You've seen a lot more activity at the state level bringing state antitrust claims, and I think that's going to continue regardless of what happens. But yeah, we've had a number of cases, for instance, Sollers, which is a Middlesex County for-profit school, where we reached a multimillion dollar settlement alongside the FTC where they used misleading advertisements, drawing students into costly IT training programs that weren't worth all that much in the end.

So we've worked very closely with our federal counterparts. Now, whether that changes, obviously I think we're likely to see some significant changes in how those relationships function, but it's certainly a good thing when states and the federal government can coordinate and share resources and share information in the name of protecting our consumers.

Alan Kaplinsky:

Right. So now let's turn to the election and the expectation that President Trump will appoint an acting director and then eventually he'll get... CFPB. And anticipating that the interpretation and enforcement of the Federal Consumer Protection Laws is going to differ quite significantly regardless of who is appointed to run the agency, but it's going to differ from that of Rohit Chopra. What effect will that have on consumers in New Jersey?

Matthew Platkin:

Well, look, I don't think consumer protection is a Democratic or Republican issue. In fact, attorneys general across the country, Democrats and Republicans, I work closely with my Republican colleagues on a number of consumer protection cases, including some of the ones that I just mentioned. And I think it would be a mistake for the Trump

administration to walk away from a lot of what the CFPB has done to the extent that the election was a referendum of how people feel about their place in the economy, their purchasing power, inflation.

I think walking away from things like rules that restrict medical debt from being accessed on your credit report or rules that protect consumers from unscrupulous late fees and junk fees from credit card companies, I don't think people went to the polls on November the 5th and voted to say, charge me more late fees on my bank account or my credit card account, or make medical debt crippling to whether I can get a mortgage, a small business loan. That's not what I think the lesson of November's election should be. But I think we've seen that there is a coordinated attack on CFPB, on the FTC, on the Department of Justice when it comes to certain actions. And while I'm hopeful that they will continue at least some of the work, particularly the bipartisan work that we've done over the past several years, I can't say I'm all that optimistic given what's been said on the campaign trail about the CFPB and about the FTC.

And that would be a shame because right now I think what you've seen is a consolidation of authority in large businesses and consumers are the ones that suffer for that. And again, this is where I think it extends beyond just consumer financial protection to more broadly a conversation about antitrust, which I have to say that incoming Trump administration has made some signals that they're not going to wholesale walk away from the antitrust work of the Department of Justice and the FTC.

And I think that's a reflection of the fact that you really do, as I said, have bipartisan consensus that our consumers are being harmed and that you need strong regulatory and enforcement actors to step up and protect them. And so while we may not agree on everything, and I certainly...

Alan Kaplinsky:

Assuming that that's not the case, I mean, if the past is prologue, we can look back at Trump 1.0 and the CFPB was managed quite differently under Mick Mulvaney and then Kathy Kraninger than it was under Richard Cordray. There was definitely things they stepped back. It was not as aggressive, even though there were a lot of enforcement cases that they brought.

The dollar amounts and the civil money penalties that were obtained by Richard Cordray during his term and now by Rohit Chopra during the term that he's completed were way above what happened during the Trump 1.0. So if that happens, what will your office do in response? Are you going to beef up, hire more people, do more networking with your colleagues in the other states? I mean, how's that going to play out?

Matthew Platkin:

Well, I think what you're going to see is more of the same, frankly. Because certainly you saw in the first Trump administration, states really stepped up across state lines often in partisan coalitions, but not always, and fill the void where the federal government has stepped back. And New Jersey is certainly one of those states. As we've talked about, we have strong consumer protection laws.

We are going to continue to use them. We'll continue to do it as much as we can in a multi-state fashion. And just to give you a sense of on the legal side, so we have a Division of Consumer Affairs, which is about 500 or so people. It includes our investigative staff and the people who put together a lot of our big consumer cases. And then we have our lawyers who represent them. And when Governor Murphy took office, I was his chief counsel at the time in 2018.

I would say we maybe had a handful of attorneys that just did full-time affirmative civil enforcement work on behalf of the state. That number is now 150. So we've grown our ability to be aggressive in state court, holding accountable bad actors, delivering returns to the residents of the state. And last year we had a record dollar return that we've ever brought back to the state, and we're going to continue to do that.

So I think the answer is it's not going to go away. The forums might shift. You might see more state only actions. But the truth is state attorneys general in particular have been active now, and you know this for a long time. And

the states have really updated their laws in many instances faster than the federal government has been able to given Congress' inaction.

So not core to CFPB, but an issue that's really important to consumers, data privacy, a lot of that activity now is happening at the state level. And states like New Jersey, which our law just went into effect within the last week, have new data privacy laws that give us new enforcement tools that we can use to hold companies accountable when they violate them.

Alan Kaplinsky:

Right. I don't know if you saw it, Matt, but just two days ago, Rohit Chopra issued about a 35-page document, which seemed like a blueprint or a map urging the states to do a variety of things, to amend their laws, to help private litigants who are bringing class actions. I wonder what your reaction to that was if you had a chance to look at it.

Matthew Platkin:

I did see it, and I think they've done a few things that have given clear thoughts to attorneys general and state legislatures about how to think about a potential rollback of federal activity in this space. I haven't had a chance to digest a chapter and verse, but I think the point is if the federal government pulls back, states both have existing authority and have I think a unique ability to move more rapidly to get the authority we need to fill that void.

And I'll just say, there's been a sea change in terms of interest in coming to work in state government. When I was in law school. I'm the youngest attorney general in the country, so it's not that long ago, the attorney general when I was in law school at Stanford was somebody by the name of Kamala Harris, and she came to speak in my law school class and five of us showed. And that's not because she wasn't impressive, it's just there wasn't that much interest not that long ago in going to work in the state attorney general's office.

Now when I go to law school, the rooms are packed. And that's I think a function of the fact that the federal government has swung so wildly back and forth. Federal courts have often made it difficult to bring a lot of types of claims, including some of the claims we're talking about, and state courts and state attorney general's offices are more nimble and more capable of bringing actions that protect our residents.

And this is true, by the way, whether you're a Democrat or Republican. There's interest in state level work that simply wasn't there even a decade ago. So I think you're going to continue to see activity at the state level. I do think on the consumer side, it's one of the few areas where you're going to continue to see bipartisan activity, which is a good thing, but it's certainly going to be... It's not going to go away if the CFPB stops doing its work.

Alan Kaplinsky:

I guess one of the things that we'll find out sooner or later is whether the next administration, which ran on a populist agenda, is really where that administration is going to come out on a lot of these contentious issues that are pending before the CFPB right now dealing with things like late fees on credit cards, over limit fees on bank accounts, medical debt you mentioned.

And it's still a little unclear. Now, Elon Musk, who is with the so-called Department of Government Efficiency, I mean, I'd be shocked if the CFPB went away. But if that were to happen, and I don't think they got the vote to eliminate the CFPB, they would need 60 votes in the Senate to do it, although there are questions about funding. The CFPB is funded in a way and that's been challenge.

And there are ways that an acting director or director could do things to effectively not get rid of the CFPB, but make it no longer a player in this area, making it necessary at that point for the AGs to get more funding and to do more. I mean, I know that there's resources are always an issue with state attorneys general. That would be quite a blow, I think, to all state attorneys general, Republican, Democratic, if Elon Musk proves to be correct here. You agree?

Matthew Platkin:

Yeah. Look, I hope he's not correct. And again, it goes back to what I was saying before. I think it would be a mistake and a misreading of where the electorate is. Because at the end of the day, these are really not Democratic or Republican issues. These are wallet issues, pocketbook issues, things that affect people's lives. If you're somebody who's uninsured or underinsured and you've accumulated, as many Americans have, substantial medical debt, I'm not sure you're going to be thrilled about the fact that that's going to hit your credit report in a way that hurts you. Or if you're getting used to the idea of not paying all these junk fees, starting to reinstate them is not something I think is going to be politically popular. And I do think there's an interesting debate going on in the Republican Party about some of these issues, including, again, going back to what we said before, including about antitrust and the role of financial protection because not everyone in the party agrees with Elon Musk to say the least. And I think that's because as they've become more of a populist party, they've had to embrace ideas that matter to the vast majority of Americans. And I think the people will see whether that commitment is genuine or not. I do think it's going to be very hard to get anything through Congress that makes the type of work that CFPB does harder. I think with a three-vote majority in the House, it's going to be next to impossible, put aside the filibuster. But I also think, as you said, they can certainly slow the enforcement priorities, and that will mean states like New Jersey will have to step up, and we are prepared to do that.

Alan Kaplinsky:

Right. I know that you've got another appointment coming up at 1:30, so this is my last question for you, and that is what areas of Consumer Financial Protection Law or what segments of that consumer finance industry will be your focus in 2025?

Matthew Platkin:

Look, I think you're going to see a continuation of some of the things that we've been focused on. I'm certainly concerned about some of the emerging FinTech products. Crypto is something that we've taken a hard look at. And then I think, like I mentioned, again, not necessarily a core to the CFPB, but it could be, that data privacy is a really big issue. It's a huge issue to New Jerseyans. It's a huge issue to Americans. And it's one of the few issues, like I said, where you see bipartisan activity across the spectrum. This certainly manifests itself as a big issue when it comes to people's financial information and the amount of information that's flowing through third-party applications on our platforms that might not be adequately secure. We are going to see, I think, over the next several years increased activity from state attorneys general on data privacy, on ensuring that consumers can control their data in accordance with many of the new laws like New Jersey that gives them more control, and that companies are living up to the obligations that they have under those state statutes. And this is something I've said in many different forms. Whether it's data privacy, AI, whatever emerging technology we're talking about here, I think it's pretty clear states some subset, sometimes it might be one, sometimes it might be several, are going to be co-regulators of that space with the federal government. I do not think you can pass a law through Congress that preempts statutes at this point. And I think what you've seen is a rejection of what happened in 1996 when they passed the Telecommunications Act, Section 230's passed. Netscape is the lead browser at the time. Obviously no one uses that today, but it's been a federal law that has prohibited or at least reduced states and other actors' ability to regulate emerging technologies in ways that protects our residents. I think in a lot of these emerging spaces, you're going to see states say, we want to have the ability to regulate or co-regulate with the federal government because we just don't trust Congress to be able to act swiftly enough to update the laws, to meet changing circumstances.

And now in a post-Chevron world, you can't expect agencies to be able to take those actions either. So that's a long-winded way of saying I think you're going to see a lot of emerging technologies coalesce or overlap with our consumer protection work, and you're going to see states update their laws to account for that.

Alan Kaplinsky:

Okay. Well, Matt, thank you very much for taking the time out of your very busy day, and we really appreciate your participating in the webinar.

Matthew Platkin:

I'm happy to do it. Thank you, Alan, for having me, and thanks everyone for joining and looking forward to continuing the discussion.

Alan Kaplinsky:

To make sure you don't miss any of our future episodes, you should subscribe to our show on your favorite podcast platform, be it Apple Podcasts, YouTube, Spotify, or wherever you listen. And don't forget to check out our blog, ConsumerFinanceMonitor.com, for daily insights on the consumer finance industry. And if you have any questions or suggestions for the show, please email us at podcasts@BallardSpahr.com.

Stay tuned each Thursday for a new episode of our show. And I'm pleased to let you know that next week's show is going to be a repurposing of the second part of our January 17th webinar where we took a deeper dive and my colleagues at Ballard Spahr will be taking a deeper dive into the impact that the void in consumer protection activities at the CFPB will have on state attorneys general. Thank you for listening and have a good day.